

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
Oct 2 3 04 PM '92

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MM Docket No. 92-218 ✓

In the Matter of

Amendment of Section 73.202(b), RM-8053
Table of Allotments, RM-8054
FM Broadcast Stations.
(Olathe and Topeka,
Kansas)

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: September 3, 1992; Released: October 2, 1992

Comment Date: November 23, 1992

Reply Comment Date: December 8, 1992

By the Chief, Allocations Branch:

1. Before the Commission for consideration are two separately filed and mutually exclusive petitions for rule making. The first proposal, filed by Bott Broadcasting Company ("Bott"), requests the substitution of Channel 222C3 for Channel 222A at Olathe, Kansas, and modification of the construction permit for Station KCCV-FM (formerly Station KVVUQ(FM)) to specify operation on Channel 222C3.¹ To accommodate the upgrade at Olathe, Bott also requests the substitution of Channel 257A for Channel 223A at Topeka, Kansas (RM-8053). The second proposal, filed by Margaret Escriva ("Escriva"), requests the substitution of Channel 223C3 for Channel 223A at Topeka, Kansas, and modification of her construction permit accordingly (BPH-871124MG)(RM-8054).

2. In support of its request, Bott states that substitution of Channel 222C3 for Channel 222A would significantly increase Station KCCV-FM's coverage, bringing additional service to the area. The upgrade would allow for the maximum and most efficient use of Channel 222. Bott filed a supplement to its petition explaining that it had recently been advised that a construction permit was granted for Channel 223A at Topeka. Bott states that it will reimburse the permittee of Channel 223A for all reasonable expenses in changing channels. It further states that it served the permittee with a copy of the supplemental comments.

3. The petition filed by Escriva proposes the substitution of Channel 223C3 for Channel 223A at Topeka, Kansas, and modification of the construction permit for Channel 223A accordingly.² Escriva states that modification of the authorization to specify the higher class channel would provide additional reception service for Topeka.

4. We believe both proposals warrant consideration. Channel 222C3 can be allotted to Olathe, Kansas, in compliance with the Commission's spacing requirements.³ To accommodate the upgrade at Olathe, we shall propose the substitution of Channel 257A for Channel 223A at Topeka, Kansas, and modification of the construction permit for Channel 223A to specify operation on Channel 257A.⁴ Channel 222C3 at Olathe is short spaced to Channel 222A, Station KDEE, Cameron, Missouri. The construction permit for Station KDEE, Cameron, was modified to specify operation on Channel 261C2 in MM Docket 89-558.⁵ The grant of a license for Station KCCV-FM may be withheld until Station KDEE is licensed on Channel 261C2. We shall propose to modify the construction permit for Station KCCV-FM, Channel 222A, to specify operation on Channel 222C3 in accordance with Section 1.420(g) of the Commission's Rules. In response to Escriva's petition, we shall propose to substitute Channel 223C3 for Channel 223A at Topeka, Kansas, and modify the construction permit for Channel 223A to specify operation on the higher class channel. Channel 223C3 can be allotted to Topeka, Kansas, in compliance with the Commission's spacing requirements at petitioner's specified site.⁶ We note that Channel 223C3, Topeka, is short spaced to the allotment site for Channel 222A, Olathe, but fully spaced to the construction permit for Channel 222A (BPH-880421NH). We shall propose to modify the construction permit for Channel 223A, Topeka, to specify operation on Channel 222C3 in accordance with Section 1.420(g) of the Commission's Rules.

5. We believe that the public interest would be served by seeking comments on these proposals for the reasons stated above. Accordingly, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Channel No.	
	Present	Proposed
OPTION I		
Olathe, Kansas	222A	222C3
Topeka, Kansas	223A, 247C, 262C, 295C, 299C	247C, 257A, 262C, 295C, 299C

¹ An application for the assignment of the construction permit of Station KVVUQ(FM), Olathe, from Marianne S. Harbart to Bott Broadcasting Company was granted on July 1, 1992 (BAPH-920515HC). Ms. Harbart has filed a statement consenting to the filing of this petition. The call sign for Station KVVUQ(FM) was changed to KCCV-FM, effective July 31, 1992.

² The construction permit was granted April 3, 1992, in MM Docket No. 89-293, FCC 92D-27 (effective May 26, 1992).

³ The coordinates for Channel 222C3 at Olathe are 38-58-46 and 94-50-44.

⁴ The coordinates for Channel 257A at Topeka are 39-07-33 and 95-41-08.

⁵ See 7 FCC Rcd 2192 (1992).

⁶ The coordinates for Channel 223C3 at Topeka are 39-05-31 and 95-47-05.

OPTION II

Topeka, Kansas	223A, 247C,	223C3, 247C.
	262C, 295C,	262C, 295C.
	299C	299C

6. IT IS ORDERED. That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Margaret Escriva, the permittee of Channel 223A, Topeka, Kansas, SHALL SHOW CAUSE why its construction permit should not be modified to specify operation on Channel 257A in lieu of Channel 223A.

7. Pursuant to Section 1.87 of the Commission's Rules, Margaret Escriva, may, not later than **November 23, 1992**, file a written statement showing with particularity why its construction permit should not be modified as proposed in the Order to Show Cause. The Commission may call on Margaret Escriva to furnish additional information. If Margaret Escriva raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Margaret Escriva will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the secretary of the Commission Shall Send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Meredith S. Senter, Jr.
Stephen D. Baruch
Leventhal, Senter
& Lerman
2000 K Street, N.W.,
Suite 600
Washington, D. C. 20006-1809

Cameron Radio, Inc.
Station KDEE
Rt. 1, Box 29A
Cameron, Missouri 64429

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **November 23, 1992**, and reply comments on or before **December 8, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Meredith S. Senter, Jr.
Stephen D. Baruch
Leventhal, Senter
& Lerman
2000 K Street, N.W.,
Suite 600
Washington, D.C. 20006-1809

Harry C. Martin
Cheryl A. Kenny
Reddy, Begley
& Martin
1001 22nd Street, N.W.,
Suite 350
Washington, D.C. 20037

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.